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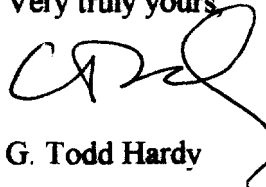
July 14, 1993

Ms. Donna Searcy
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Dear Ms. Searcy:

Enclosed please find the original and ten copies of the Comments filed by
Group W Satellite Communications in support of various Petitions for Reconsideration
and Clarification in the matter of Docket 92-265.

Very truly yours,



G. Todd Hardy

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Before The

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C.

In The Matter Of:)	
)	
Implementation of the Cable Television)	
Consumer Protection and Competition)	MM Docket No. 92-265
Act of 1992)	
)	
Development of Competition and)	
Diversity in Video Programming)	
Distribution and Carriage)	

**COMMENTS OF GROUP W SATELLITE COMMUNICATIONS
IN SUPPORT OF PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

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Mark Melnick, Esq.**

For itself and on behalf of:

**Opryland USA Inc and
Country Music Television, Inc.**

Its Attorneys

July 14, 1993

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**COMMENTS OF GROUP W SATELLITE COMMUNICATIONS
IN SUPPORT OF PETITIONS FOR RECONSIDERATION AND CLARIFICATION**

I. Introduction

Group W Satellite Communications ("GWSC") is a venture comprised of direct and indirect wholly-owned subsidiaries of Westinghouse Broadcasting Company, Inc. ("WBC"). Since 1983, GWSC has been engaged in the business of distributing cable programming services and providing satellite transmission services.

Currently, the cable programming services distributed by GWSC include The Nashville Network ("TNN") and Country Music Television ("CMT"). GWSC distributes TNN and CMT (the "Services") as an agent for the owners of the Services. As such, GWSC is charged with the direct responsibility for the formulation and execution of all policies and practices associated with the sale of the Services through

The TNN service is wholly-owned by Opryland USA Inc ("Opryland"), an indirect subsidiary of Gaylord Entertainment Company ("Gaylord"). The CMT service is wholly-owned by Country Music Television, Inc. ("CMTI"), a corporation owned indirectly by subsidiaries of Gaylord and WBC.

These comments are offered in support of the Petitions for Reconsideration and Clarification filed by Viacom International, Inc. ("Viacom") and Time Warner Entertainment Company, L.P. ("TWE") regarding the First Report and Order dated April 30, 1993 in this rule making proceeding (the "Order"). Given the de minimis cable holdings of GWSC, Gaylord and their related companies¹ and the unwarranted impact of the Order on the distribution of the Services, GWSC offers the following additional information and argument to the outstanding requests for reconsideration of the rules contained in the Order.

II. De Minimis Cable Subscribership Does Not Affect Program Distribution Policies

The arguments raised in the Viacom Petition for Reconsideration with regard to the suggested de minimis exemption to the program access rules are well taken. GWSC suggested in its initial comments in this proceeding that the Commission adopt a threshold for consideration of regulation of integrated relationships. (Comments of GWSC in MM Docket No. 92-265, at pages 6-8.) Reconsideration of such a de minimis exemption now sought by Viacom is appropriate not only for the reasons previously noted by GWSC but also in light of the additional information provided

being insufficient to support a definite point at which "the incentives for such vendors to favor their affiliated customers differ from other vertically integrated programming vendors". The information and materials supplied by Viacom together with its Petition advance that record significantly. In addition, the following discussion of circumstances surrounding the distribution of the Services by GWSC is now offered to complete that record in more detail than was previously available to the Commission and in response to the specific request for such further information by the Commission in its Order.

In suggesting that review of additional data and an enhanced record could alter the Commission view of a de minimis exemption to the program access rules, the Commission correctly noted that the scope of the review and analysis requires consideration of the "incentives and past conduct" of vendors with de minimis vertical interests. (Order ¶33, fn.19.) None of the companies involved in the distribution of either TNN or CMT has any incentive to favor affiliated cable customers. Past conduct of all those companies reveals that distribution policies applicable to the Services are

Nationwide, GWSC supplies TNN to over 58 million television households and CMT to over 17 million television households. Approximately 170,000 subscribers receive the Services in the cable systems that trigger regulation of the Services. That total attributed cable universe represents less than one half of one percent of the total viewing audience of TNN and approximately one percent of the viewing audience of CMT. The existence of such small numbers of subscribers in attributed cable systems has no impact whatsoever on the policies for distribution of the Services.

No Vendor interested in the business of selling programming to virtually every television household in the country would jeopardize its terms of distribution through a wide range of unaffiliated distributors by either framing overall wholesale policies around, or granting exceptional terms to, one of its smallest customers. For nationally delivered programming, there can be no incentive to favor any affiliated audience of such de minimis overall importance. Rules for regulation of integrated programmers should be modified to reflect that reality.

B. The cable subscribership that triggers regulation of TNN and CMT is insignificant when compared to the number of customers served in non-cable households

As discussed in the initial Comments filed by GWSC in this proceeding, the 170,000 cable households served in the attributed cable systems also pales in comparison to the 1.3 million households that receive the Services through technologies other than cable television (See Comments of GWSC in MM Docket 92-265 at p. 7 fn. 15-16). It is also completely unrealistic to conclude that GWSC would jeopardize the distribution of the Services to over one million homes and potentially many more, for the sake of benefiting a universe of homes as small as that represented by the totality of the attributed cable systems.

Since the filing of Comments in this proceeding, GWSC entered into arrangements for the distribution of the Services via medium power and high power Direct Broadcast Satellite service. The minuscule technical cable ownership holdings of the principal of GWSC are more irrelevant than they ever were to the formulation of overall non-cable distribution policy and practice for TNN and CMT. With the advent of expected satellite service to millions upon millions of households throughout the

country, no isolated ownership of cable systems could reasonably create any incentive to affect distribution practices for the Services in the least.

C. TNN and CMT are distributed by a Vendor that has no ownership of the cable systems that trigger regulation under the current rules

As currently written, the program access rules contained in the Order would result in the regulation of distribution of the Services solely as a result of the accident of ownership of cable systems by an entity, Gaylord, that neither makes programming or other operational decisions for those cable systems nor exercises direct control over the wholesale distribution of the Services to multichannel distributors in any medium. (As noted in the initial Comments of GWSC at page 7, footnote 14, an indirect subsidiary of WBC is a minority owner of a cable system with approximately 11,000 subscribers. That cable asset is currently under contract of sale scheduled to close on or before October 30, 1993.)

Gaylord owns a majority equity interest in Cencom Cable Television, Inc., the owner of four cable systems that serve approximately 170,000 cable subscribers ("Cencom Cable Systems"). The Cencom Cable Systems are managed by Cencom Cable Associates, Inc. ("CCA") and are partially owned by a corporate affiliate of CCA. Both CCA and that affiliate are unrelated in ownership to Gaylord or GWSC. All of the operating decisions made with respect to the Cencom Cable Systems are made by CCA, including all programming decisions.

The ownership of the Cencom Cable Systems by Gaylord subjects the Services to regulation despite the fact that, for independent commercial reasons, Gaylord elected to disassociate itself from the daily operational responsibilities of both distributing the Services and operating the subject cable properties. Since Gaylord holds an interest in CMT and owns TNN, the Services are subjected to regulation under the terms of the Order even though: (1) the operating decisions of the cable systems that occasion that regulation are not made or implemented by Gaylord and (2) the distribution policies sought to be governed by the regulations are not established or implemented by Gaylord.

Given the organizational distance that exists between CCA and GWSC, two completely unrelated managing companies, there is no incentive for GWSC to alter the policies and practices of distribution of the Services to benefit the operating circumstances of an entity with which it has no equity relationship or other relevant commercial relationship. The chain of attribution that is the underpinning to the threshold for regulation under the Order and its rules snaps under the circumstances. The attenuated connection between cable operation and program distribution, coupled with de minimis subscribership levels discussed above, screams for exceptional treatment in the rules under discussion here.

D. Past conduct of GWSC and the owners
of TNN and CMT confirms that there is no favored
treatment afforded the attributed cable properties

The accident of ownership of the Cencom Cable Systems by Gaylord has never been even slightly considered in the formulation and implementation of distribution policy for the Services by GWSC. Since 1983, GWSC developed an ever increasing audience for TNN, and more recently for CMT, in an ever increasing variety of technological marketplaces, all without any reference to the fact that its principal happens to own a small number of cable systems. As discussed above, there is no reason for GWSC to do otherwise. CMTI, Opryland and Gaylord have never suggested anything different.

The proof of the observations made immediately above is found in the dealings between GWSC and CCA regarding the negotiation of affiliation agreements of the Services with regard to the Cencom Cable Systems and other cable systems managed by CCA. Those affiliation agreements were negotiated at "arms length" without any direct involvement or oversight of the owner of those cable systems. The agreed upon terms were, in every case, equivalent to terms and conditions offered and accepted by unrelated cable operators and cable systems of a size and other characteristics similar to the Cencom Cable Systems. When, in the negotiating process, GWSC had the theoretical opportunity to unduly favor attributed cable systems, no special terms or conditions were provided to those systems because it is not in the interest of GWSC or the owners of the Services to do so.

III. In No Event Should the Rules Regulate the Distribution of Program Services Beyond the Presence of De Minimis Attributed Cable Ownership

In its Petition for Reconsideration in this proceeding, TWE argues that the direction under the Cable Act of 1992 to regulate vertically integrated relationships cannot, as a matter of policy, extend to areas in which that vertical integration is not present.

In its initial Comments in this proceeding, GWSC similarly argued that any regulation of vendors with attributed cable ownership should be specifically restricted to the areas of cable holdings as a method of reasonably tailoring the degree of regulation to the extent of integration that occasioned the regulation. (See GWSC Comments in MM Docket 92-265 at pp. 9-10.)

In the alternative to the arguments raised in Section II. above, GWSC adds its voice to the call for qualification of regulation in areas of integration, specifically and especially for regulation prompted by de minimis attributed cable ownership. If those instances of insignificant and technical vertical integration discussed in Section II. of these Comments are to result in any regulation under reconsideration of the rules, such regulation cannot be reasonably justified in any other degree.

IV. Conclusion

GWSC believes that the overreaching effect of the current program access rules exemplified in these Comments clearly demonstrates both the commercial need for, and administrative wisdom in, reconsideration of those rules as they apply to cases of